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Paper No. 22

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MAY 19 2005

In re Application of:
Dong Yeung Kwak
Serial No.: 09/660,186
Filed: September 12, 2000
Attorney Docket No.: 8733.298.00

DECISION ON PETITION TO
WITHDRAW THE HOLDING
OF ABANDONMENT

This is a decision on the petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181(a) filed on October 29, 2004. There is no fee for this petition.

The petition is **GRANTED**.

On July 15, 2004, the Board of Patent Appeals and Interferences ("the Board") rendered a decision affirming the final rejection of all the claims pending in the application. On October 20, 2004, a Notice of Abandonment was mailed indicating that the application was abandoned in view of the decision by the Board rendered on July 15, 2004 and because the period for seeking court review of the decision had expired and there were no allowed claims.

Petitioner asserts that a Request for Continued Examination (RCE) and Amendment After RCE were timely filed on September 15, 2004. To support this assertion, petitioner has submitted a copy of the Amendment After RCE and a copy of a stamped return postcard which properly identifies and acknowledges receipt of the RCE and Amendment After RCE on September 15, 2004. Unfortunately, a copy of the RCE itself was not found to be submitted with the petition, although so stated in the petition. A call was made to petitioner on May 13, 2005 by Special Programs Examiner Edward Westin requesting that petitioner submit a copy of the RCE via facsimile transmission. A copy of the RCE was so submitted on May 16, 2005.

A review of the application file record reveals that the RCE and Amendment After RCE having been acknowledged on the stamped return postcard as being received in the United States Patent and Trademark Office (USPTO) on September 15, 2004 are not of record in the application file and cannot be located. However, M.P.E.P. § 503 states that a postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

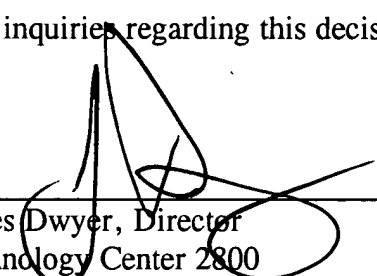
Accordingly, it is concluded that the RCE and Amendment after RCE were timely received but lost after receipt thereof.

For the above stated reason, the petition is granted. The Notice of Abandonment mailed October 20, 2004 is hereby **VACATED** and the holding of abandonment is withdrawn.

The copy of the Amendment after RCE filed with the petition and the copy of the RCE submitted by facsimile transmission on May 16, 2005 are accepted since the RCE and Amendment After RCE originally submitted are apparently lost. It is noted that a check for the fee for the RCE was received on September 15, 2004 and posted on September 16, 2004.

The application file is being forwarded to the Technology Center 2800 support staff for completing the processing of the RCE and for entry of the amendment. The application file will then be forwarded to the examiner for prompt appropriate action.

Any inquiries regarding this decision should be directed to Edward Westin at (571) 272-1638.



James Dwyer, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components